

# Senate Daily Reader

**Thursday, January 22, 2004**

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# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

400J0328

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 43** - 01/20/2004

Introduced by: The Committee on Transportation at the request of the Department of  
Transportation

1 FOR AN ACT ENTITLED, An Act to authorize acquisition of utility corridors and to authorize  
2 the use of such property to be regulated by administrative rule.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 31-19 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 The Department of Transportation may acquire by gift, devise, purchase, or condemnation,  
7 an easement or fee interest in real estate, other than a right-of-way, for the purpose of providing  
8 a suitable location for the relocation of utility lines and facilities displaced as a result of a  
9 highway construction project. After all displaced utility lines and facilities have been  
10 appropriately relocated, the department may allow the use of such property by additional utilities  
11 under the terms and conditions established by the department. The South Dakota Transportation  
12 Commission may provide, by rules promulgated pursuant to chapter 1-26, for the terms and  
13 conditions for use of such property by utilities.

14 Section 2. That chapter 31-19 be amended by adding thereto a NEW SECTION to read as  
15 follows:



1 No owner or operator of utility lines or facilities displaced as a result of a highway  
2 construction project may be compelled to relocate those utility lines or facilities to either an  
3 easement or a fee interest acquired pursuant to section 1 of this Act.

4 Section 3. That § 31-19-2 be amended to read as follows:

5 31-19-2. Before acquiring land or material ~~for rights-of-way and borrow pit, either by~~  
6 ~~purchase or~~ by condemnation, the Department of Transportation shall, by resolution, declare the  
7 necessity for acquiring the land or material and file a copy of the resolution with the office of  
8 right-of-way in the department of Transportation.

9 Section 4. That § 31-19-3 be amended to read as follows:

10 31-19-3. If land or material ~~for right-of-way and borrow pit~~ is to be acquired by  
11 condemnation, the Department of Transportation, on behalf of the state and in its name, shall  
12 file a petition in the circuit court for the county in which the property to be taken or damaged  
13 is situated, praying that the just compensation be made and such property be ascertained by a  
14 jury and shall name the Department of Transportation as the department of the state government  
15 desiring to take or damage ~~said~~ the property on behalf of the state as plaintiff. All persons  
16 having an interest in or a lien upon the property affected by the proceedings shall be named as  
17 defendants so far as they ~~shall~~ may be known at the time of the filing of ~~same~~ the petition. It  
18 shall contain a description of the property to be taken or damaged and shall contain a copy of  
19 the related resolution of necessity; that was passed by the Transportation Commission ~~in relation~~  
20 ~~thereto~~. The purpose for which the property is to be taken or damaged shall be clearly set forth  
21 in the petition. It ~~shall~~ is not ~~be~~ necessary to specify the interest or claim of the several  
22 defendants in the land or property affected by the proceedings. ~~Said~~ The petition shall be signed  
23 and verified in the manner and as provided by § 15-6-11 relating to the signing of pleadings in  
24 the circuit courts.

Section 5. That § 31-19-19 be amended to read as follows:

31-19-19. Whenever any land ~~or lands~~, easement in ~~same~~ land or material is necessary for right-of-way in order to make a safe or proper grade, for the relocating of utility facilities, or for widening, changing, relocating, constructing, reconstructing, maintaining, or repairing any portion of the state trunk highway, or ~~whenever~~ if it is necessary for providing cut slopes, borrow pits, channel changes, or to afford unobstructed vision on ~~said any state trunk highways~~ highway and at any point of danger to public travel, for right-of-way and borrow pit, the State of South Dakota, through and by its Department of Transportation, or ~~counties which have been~~ any county authorized by agreement to acquire on behalf of the state ~~of South Dakota by agreement~~, shall acquire and pay for the same out of state highway funds unless it is otherwise agreed. The cost of ~~said the~~ land or material and expense of purchase or condemnation shall be paid as part of the cost of the state trunk highway unless otherwise agreed.

Section 6. That § 31-19-20 be amended to read as follows:

31-19-20. Whenever any land or material, dirt, sand, or gravel is required for the construction, reconstruction, maintaining, or repairing of any portion of the state trunk highway, ~~which~~ or for the relocating of utility facilities, and if the land or material, dirt, sand, or gravel lies outside the right-of-way of ~~said the~~ highway or adjacent borrow pits, ~~it shall be the duty of the state to~~ shall purchase or condemn ~~said the~~ land or material, dirt, sand, or gravel and pay for the same out of the state highway fund. ~~Said~~ The land or material, dirt, sand, or gravel may be acquired either by purchase or condemnation and any cost or expense of purchase or condemnation shall be paid for in the same manner as material, dirt, sand, or gravel or land is paid for. In case of condemnation, the proceedings provided for condemnation ~~of right-of-way and borrow pit~~ in §§ 31-19-1 to 31-19-19, inclusive, or the provisions of chapter 21-35 ~~shall be~~ are applicable and either proceeding may be used.

1       Section 7. That chapter 31-19 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3       The acquiring of an easement or fee interest pursuant to section 1 of this Act may not be  
4 admitted as evidence in any action under chapter 21-35 brought by any owner or operator of  
5 utility lines or facilities displaced as a result of a highway construction project. Any easement  
6 or fee interest acquired pursuant to that section may not serve as a basis for a finding of fraud,  
7 bad faith, or abuse of discretion under § 21-35-10.1.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

400J0403

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 57** - 01/20/2004

Introduced by: The Committee on Judiciary at the request of the Department of Corrections

1 FOR AN ACT ENTITLED, An Act to repeal and revise certain provisions relating to mandatory  
2 consecutive sentences.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 23A-27-36 be repealed.

5 ~~—23A-27-36. If any prisoner commits a crime, upon conviction, the sentence of the prisoner~~  
6 ~~shall not commence to run until the expiration of the last sentence of his imprisonment. The~~  
7 ~~term "prisoner" as used in this section includes every person in custody, under arrest, or under~~  
8 ~~process of law issued from a court of competent jurisdiction.~~

9 Section 2. That § 22-11A-2 be amended to read as follows:

10 22-11A-2. Any prisoner who escapes is guilty of a Class 4 felony. ~~If such prisoner is under~~  
11 ~~sentence of imprisonment, his sentence on conviction for an escape shall commence following~~  
12 ~~the expiration of the term of the last sentence of his imprisonment.~~

13 Section 3. That § 24-15A-20 be amended to read as follows:

14 24-15A-20. ~~Any~~ If a person is convicted of a felony while an inmate under the custody of  
15 the warden of the penitentiary ~~and for which,~~ the sentence is ~~made to~~ shall run consecutively and



1 the person is not eligible for consideration for parole until serving the last of all such  
2 consecutive sentences, unless the sentencing court specifically orders otherwise. ~~In such cases~~  
3 ~~the~~ The parole date shall be established subject to the provisions of § 24-15A-32. This section  
4 does not apply to a person who commits a felony while on parole as defined in § 24-15A-15.

5 Section 4. That § 22-18-27 be amended to read as follows:

6 22-18-27. A penitentiary sentence arising from a conviction pursuant to § 22-18-26 may not  
7 commence until the expiration, with no allowance of good time, of the last sentence of  
8 imprisonment, ~~pursuant to § 23A-27-36.~~

9 Section 5. That § 22-11A-9 be amended to read as follows:

10 22-11A-9. A penitentiary sentence arising from a conviction under § 22-11A-8 may not  
11 commence until the expiration, with no allowance of good time, of the last sentence of  
12 imprisonment, ~~pursuant to § 23A-27-36.~~